

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT COURT OF ALABAMA
EASTERN DIVISION**

LORI L. FAWBUSH,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	
ALLISON M. LUSARDI,)	CV-3:07-cv-204-WKW
et al.,)	
)	
Defendants.)	

**MOTION TO DISMISS DEFENDANT
TRAVELERS CASUALTY AND SURETY COMPANY,
WITHOUT PREJUDICE**

COMES NOW the Plaintiff, Lori L. Fawbush, by and through her attorney of record, and hereby moves this Honorable Court to dismiss the Defendant, Travelers Casualty and Surety Company (hereinafter “Travelers”) as a Defendant in this case, without prejudice, and as grounds therefor says as follows:

1. That the Defendant, Travelers, issued a policy of insurance to the Plaintiff, Lori Fawbush, which contained uninsured/underinsured motorist coverage up to policy limits of \$25,000.00. Said insurance policy was written and delivered in Georgia and pursuant to the terms of said policy and Georgia law is a “set-off policy.” Accordingly, under the terms of said Travelers’ policy, Travelers would not be liable to the Plaintiff unless the tort feisor had no insurance coverage or insurance coverage of an amount less than \$25,000.00.

2. The Plaintiff has been advised through discovery that the Defendant, Allison M. Lusardi, is insured by Safeco Insurance Company of Illinois and has policy limits of \$250,000.00 per person and \$500,000.00 per occurrence. Accordingly, in the event a verdict is obtained by the Plaintiff

against the Defendant, Allison M. Lusardi, she would have insurance coverage to satisfy said verdict and judgment of an amount up to \$250,000.00.

3. Given that the Defendant Lusardi's insurance coverage exceeds \$25,000.00, Plaintiff sees no circumstance under which Travelers would be liable to Plaintiff for any amount of judgment Plaintiff might obtain against Defendant Lusardi in this matter.

WHEREFORE, Plaintiff prays that this Honorable Court will enter an Order dismissing the Defendant Travelers Casualty and Surety Company, without prejudice.

DEAN & BARRETT

s/ J. Tutt Barrett

J. TUTT BARRETT (BAR049)
Attorney for Plaintiff

OF COUNSEL:

P.O. Box 231
Opelika, Alabama 36803-0231
Phone: (334) 749-2222
Fax: (334) 749-5857

CERTIFICATE OF SERVICE

I hereby certify that I have this date served an exact copy of the foregoing upon:

Ronald G. Davenport, Esq.
R. Mac Freeman, Jr., Esq.
RUSHTON, STAKELY, JOHNSTON & GARRETT, P.A.
P.O. Box 270
Montgomery, AL 36101

Randolph Gillum, Esq.
ROGERS & ASSOCIATES
3000 Riverchase Galleria, Suite 650
Birmingham, AL 35244

VIA FACSIMILE and by placing a true copy of same in the United States Mail, postage prepaid, this 22nd day of June, 2007.

s/J. Tutt Barrett

J. TUTT BARRETT